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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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14 IN RE SUBPOENAS TO ELECTRONIC
15 FRONTIER FOUNDATION AND FRED
16 VON LOHMANN.

Case No.: Misc. 10-80276 (JSW)

[Case No. 06 Civ. 05936 (KMW), U.S. District
Court, Southern District of New York]

17 ARISTA RECORDS LLC, et al.,

**PLAINTIFFS' REQUEST TO FILE SUR-
REPLY AND SUR-REPLY REGARDING
MOTION TO QUASH**

18 Plaintiffs,

Date: TBD [Per Scheduling Order, Doc. No.
10]

19 vs.

20 LIME WIRE LLC; et al.,

21 Defendants.

1 Plaintiffs respectfully seek permission to file this short Sur-Reply Regarding EFF/von
 2 Lohmann's Motion to Quash to advise the Court that, on December 14, 2010, Plaintiffs supplied
 3 EFF and von Lohmann with Amended Subpoenas to correct an inadvertent error that came to
 4 Plaintiffs' attention as a result of EFF/von Lohmann's Reply to Respondents' Supplemental Brief.
 5 That brief notes that the subpoenas call for "any document which refers to or was created during
 6 the period from January 1, 2005 to present." *See* Doc. No. 29 at 4. The reference to 2005 in the
 7 subpoenas was inadvertent; Plaintiffs intended to request "any document which refers to or was
 8 created during the period from January 1, 2002 to present." Plaintiffs note that EFF/von
 9 Lohmann previously have treated the subpoenas as calling for information outside of the January
 10 1, 2005-present period. Indeed, in responding to the Court's questions regarding the existence of
 11 non-privileged documents, Ms. Cohn expressly noted "the lack of any time limitation" on the
 12 subpoenas. *See* Supp. Cohn Decl. (Doc. No. 18) at paragraph 6. Mr. von Lohmann's declaration
 13 to this Court also establishes that he began communicating with Lime Wire in 2002. *See* von
 14 Lohmann Decl. (Doc. No. 14) at paragraph 5.

15 Plaintiffs respectfully submit that the briefing already supplied to this Court addresses the
 16 issues raised by the Amended Subpoenas. The Amended Subpoenas are identical to the
 17 previously issued subpoenas except that: (1) the time period has been adjusted to state "January 1,
 18 2002 to the present" and (2) the return date has been adjusted to December 29, 2010. *See*
 19 12/15/2010 Boyd Decl., Ex. A. Plaintiffs believe that the accommodations reached during the
 20 meet and confer process – including Plaintiffs' offer to limit all requests to documents that
 21 constitute or refer to communications between EFF/von Lohmann and Lime Wire would apply to
 22 the Amended Subpoenas as well. Plaintiffs also note that the statistics EFF/von Lohmann
 23 provided to the Court regarding the burden of complying with the subpoenas (*see, e.g.*, 12/9/10
 24 von Lohmann Decl. (Doc No. 26) at paragraph 2 (discussing 1500 documents); McSherry Decl.
 25 (Doc No. 25) at paragraph 3 (discussing 4,000 documents)), do not appear to be conditioned on a
 26 time limitation of January 1, 2005 to the present. Plaintiffs have sought confirmation of that
 27 understanding from EFF and von Lohmann but have not yet received a response. *See* 12/15/2010
 28 Boyd Decl., Ex. A

1 DATED: December 15, 2010

Munger, Tolles & Olson LLP

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3 By: *s/Susan T. Boyd*
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5 Attorneys for Plaintiffs

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